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From: Anne Caldas <Acaldas@ansi.org>
To: "smagnott@fcc.gov" <smagnott@fcc.gov>
Date: 9/19/00 3:35PM
Subject: Response to Inquiry

Rocky
#99-216

Dear Ms. Magnotti:

Thank you for your interest in the American National Standards (ANS) process. This E-mail explains the ANS process and key components of the accreditation and approval processes. Additional information may be found at the following URLs:

- * Accreditation information:
http://web.ansi.org/rooms/room_16/public/accredit.html
<http://web.ansi.org/rooms/room_16/public/accredit.html>
- * Appeals: http://web.ansi.org/rooms/room_16/public/appeals.html
<http://web.ansi.org/rooms/room_16/public/appeals.html>
- * ANS approval process:
http://web.ansi.org/rooms/room_16/public/ans.html
<http://web.ansi.org/rooms/room_16/public/ans.html>
- * Audit requirement:
http://web.ansi.org/rooms/room_16/public/audit.html
<http://web.ansi.org/rooms/room_16/public/audit.html>
- * Frequently asked questions:
http://web.ansi.org/rooms/room_16/public/faq/
<http://web.ansi.org/rooms/room_16/public/faq/>

The American National Standards Institute (ANSI) does not itself develop American National Standards (ANSs); rather it facilitates development by establishing consensus among qualified groups. ANSI accredits standards developing organizations to develop American National Standards. There are approximately 200 ANSI-accredited standards developers who develop standards in numerous different sectors. To be ANSI-accredited, a standards developing organization is required to adhere to a set of due process-based requirements or procedures. Some of the hallmarks of the ANSI requirements include the following:

- * Consensus must be reached on a proposed standard by a group or committee that has representatives from materially and affected interest groups.
- * The proposed standard is subjected to public review comments as well that must be evaluated and responded to.
- * Anyone believing that due process principles were not sufficiently respected during the standards development process has a right to appeal in accordance with the ANSI-accredited procedures of the standards developer.

ANSI-accredited standards developing organizations - and the experts that populate the consensus bodies of these groups - serve an important public interest function in devising American National Standards. The public interest is both served and protected if the standards developer is accredited by ANSI and meets the Institute's requirements for openness, balance, consensus and other due process safeguards.

The ANSI Procedures for the Development and Coordination of American National Standards (the ANSI Procedures) is the

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governing document relative to the American National Standards (ANS) process. This document is available at http://web.ansi.org/public/library/std_proc/default.htm <http://web.ansi.org/public/library/std_proc/default.htm> . ANSI's Standards Action is a key public review vehicle that supports, among other activities, the ANS process. It is available for free at http://web.ansi.org/rooms/room_14/ <http://web.ansi.org/rooms/room_14/> .

The ANS process provides for several types of appeals. Appeals of standards are made to the ANSI Board of Standards (BSR) Review, unless the standard has been approved by an ANSI Audited Designator (see below). Appeals of accreditation issues such as procedural compliance and complaints against ANSI Audited Designators are made to the ANSI Executive Standards Council (ExSC). Appeals of appeals decisions issued by either the BSR or the ExSC are made to the ANSI Appeals Board, which is the final level of appeal at ANSI. Additional explanatory text follows.

1. Appeal of the approval of a standard as an American National Standard: this appeal is to the ANSI Board of Standards Review (BSR). The BSR's Operating Procedures are posted at http://web.ansi.org/public/library/ansi_proc/procbcsr.html <http://web.ansi.org/public/library/ansi_proc/procbcsr.html> . The related appeals procedures are contained in clause 8, which is excerpted below for your convenience. Please note that these procedures state that: "The original action of the BSR shall stand until all levels of appeal at ANSI have been completed unless the BSR determines otherwise."

8 Appeal of action on American National Standards

8.1 Right to appeal

Directly and materially affected persons (organizations, companies, government agencies, individuals, etc.) who completed the appeals process at the standards developer level and whose position is included in the BSR documentation may appeal to the BSR a prior BSR decision regarding the approval or withdrawal of an American National Standard. The appeal shall be based on procedural or substantive criteria (see clause 4), or both. The burden of persuasion shall rest with the appellant.

The BSR may also hear appeals remanded or referred to the BSR by the ANSI Appeals Board. The BSR will not render decisions on the relative merits of technical matters, but it shall consider whether due process was afforded technical concerns.

8.2 Appeals mechanism

The appeal and all related materials shall be filed in writing with the secretary of the BSR within fifteen (15) working days after receipt of notification by ANSI of an action by the BSR. If the appellant is unable to provide all the appeals materials within the fifteen (15) working days, the appellant shall request an extension from the Secretary of the BSR, and shall provide a justification therefor, within the fifteen (15) working days, or shall forfeit the right to further appeal. The appeals materials shall be accompanied by a filing fee. This fee may be waived or reduced upon sufficient evidence of hardship. In addition, this fee may be reduced either if, in accordance with specifications provided by the ANSI Director of Procedures and Standards Administration, (a) the appeals statement, including all back-up material, is submitted entirely in electronic format or (b) twenty-five (25) hard copies of all appeals

materials are submitted. The appeal shall include a statement with evidence as to why the action of the BSR should be modified. The respondent(s) shall be notified of an appeal and be given fifteen (15) working days after receipt of such notification to submit to ANSI a statement with evidence in opposition to the appeal. The original action of the BSR shall stand until all levels of appeal at ANSI have been completed unless the BSR determines otherwise. No party to an appeal may communicate with any member of the BSR while the matter is pending.

8.3 Appeals hearing

The BSR may conduct the appeals hearing at the next regularly scheduled meeting, or on a date mutually agreeable to all parties concerned. Both the appellant and the respondent(s) shall be notified of the date selected at least fifteen (15) working days in advance of the date set and shall be invited to be represented at the hearing.

8.4 Appeals decision

After the BSR hearing, the members present may vote to sustain the appellant's request that the BSR modify its previous action by a vote of two-thirds (2/3) of the Board members present, excluding abstentions.

If a quorum is not present, the BSR members present shall vote to recommend that the BSR sustain the appellant's request that the BSR modify its previous action. BSR action shall be taken by letter ballot, based on the hearing record and the recommendation of the members present. Failing to achieve a two-thirds (2/3) vote to sustain an appeal, the previous BSR action stands.

The secretary of the BSR shall notify both the appellant and the respondent(s) of the decision of the Board and provide a short statement identifying the basis of the Board decision, and announce the action in Standards Action. The BSR action date will be the date of notification.

8.5 Further appeal

The final decision of the BSR may be appealed to the ANSI Appeals Board in accordance with the Appeals Board Operating Procedures.

8.6 Informal settlement

ANSI encourages settlement of disputes at any time if the settlement is consistent with the objectives of the ANSI Procedures. Any settlement (to which the parties agree in writing) that is consistent with these procedures, or an agreement to withdraw the appeal, will terminate the appeal process. If the settlement leads to a substantive change in the standard, the change must be processed in accordance with the ANSI Procedures.

2. An appeal of a standards developer's ANSI-accredited status is made to the ANSI ExSC. The ExSC's Operating Procedures are posted at http://web.ansi.org/public/library/ansi_proc/exsc.html <http://web.ansi.org/public/library/ansi_proc/exsc.html>. The related appeals procedures are contained in clauses 16 and 18, which are excerpted below for your convenience. Please note that these procedures state that: "The original action of the ExSC shall stand until all levels of appeal at ANSI have been completed unless the ExSC determines otherwise."

16 ExSC hearing of appeals

All directly and materially affected persons (organizations, companies, government agencies, individuals etc.) have the

right to appeal actions or inactions of the ExSC or its designee. The ExSC may also hear appeals remanded or referred to the ExSC by the ANSI Appeals Board. Hearing of appeals by the ExSC shall be handled by a panel of at least five ExSC voting members established for each appeal. If five members of the ExSC are not available to serve on the panel, the Chair or the Vice Chair of the ExSC may appoint one or more additional panel members who shall be persons knowledgeable about the ANSI Procedures and the standards development process. Such appointment(s) of non-ExSC members shall be with the concurrence of all parties to the appeal. A majority of the members of the panel shall be members of the ExSC.

An appeal shall be initiated by written notice of appeal to the Secretary of the ExSC. All appeals, and all related materials, shall be filed in writing with the secretary of the ExSC within fifteen (15) working days of notification by ANSI of an action by the ExSC or its designee, or at any time with respect to an inaction. If the appellant is unable to provide all the appeals materials within the fifteen (15) working days, the appellant shall request an extension from the Secretary of the ExSC, and shall provide a justification therefor, within the fifteen (15) working days, or shall forfeit the right to further appeal. The appeals materials shall be accompanied by a filing fee. This fee may be waived or reduced upon sufficient evidence of hardship. In addition, this fee shall be reduced if, in accordance with specifications provided by the ANSI Director of Procedures and Standards Administration, either (a) the appeals statement, including all back-up material, is submitted entirely in electronic format or (b) fifteen (15) hard copies of all appeals materials are submitted. The notice of appeal shall specify the decision from which the appeal is taken, a short statement of the matter in controversy, the reason(s) why the appellant believes the decision is in error, and the specific relief sought by the appellant from the ExSC.

The appeal notice and statement shall be distributed by the Secretary of the ExSC to the potential respondent to allow them the opportunity to respond, if they so desire. Thereafter, this party shall have fifteen (15) working days to submit their response to the appeal statement. The response shall include the reasons why the respondent(s) believe(s) the decision under appeal was correct and a reference to the provisions in the ANSI Procedures upon which they rely, and all evidence in support of the respondent's position. If the respondent is unable to provide all the appeals materials within fifteen (15) working days, the respondent shall request an extension from the Secretary of the ExSC, and shall provide a justification therefor, within the fifteen (15) working days, or shall forfeit the right to respond.

Extensions of time to submit an appeal statement or response may be granted at the discretion of the Chair of the ExSC, or, if the Chair is unavailable, of the Vice Chair of the ExSC.

Upon receipt of the response, the Secretary of the ExSC shall establish a panel to hear the appeal, and, in consultation with the panel members and the parties involved in the appeal, shall fix a date for the appeal hearing. All parties shall be given at least fifteen (15) working days notice of the date of the hearing. No party to an appeal may discuss the appeal with any member of the ExSC appeals panel while the matter is pending. Panel members shall receive copies of all statements at least fifteen (15) working days prior to the date of the appeal hearing.

At the hearing, the appellant's position shall be presented first, followed by the respondent. A half hour is allotted for each side, with a limit of three speakers per side. Additional time is allotted for a question and answer session. At the close of the question and answer period, the appeals panel shall go into executive (closed) session for the purpose of arriving at a decision.

Decisions of ExSC appeals panels shall require a majority vote of the panel, shall represent the decision of the ExSC, and shall be provided to the ExSC for their information. Should the appellant or the respondent not be present at the hearing, the decision of the ExSC appeals panel shall be based on the written submissions and the presentations made by the parties that are present at the hearing or who participate via teleconference. Notice of a decision reached by the ExSC appeals panel shall be sent to the parties within fifteen (15) working days unless an extension is authorized by the Chair of the ExSC, or, if the Chair is unavailable, by the Vice Chair of the ExSC. The decision shall specify the outcome of the appeal, and shall be accompanied by an explanation of the reasons for such outcome, and the specific relief granted, if any. The outcome of the appeal shall be announced in Standards Action.

The final decision of the ExSC appeals panel may be appealed to the ANSI Appeals Board in accordance with the Appeals Board Operating Procedures.

18 Appeal of ExSC actions

In accordance with the Appeals Board Operating Procedures, any action or inaction of the ExSC may be appealed to the Appeals Board by those directly and materially affected parties that have been adversely affected. The original action of the ExSC shall stand until all levels of appeal at ANSI have been completed unless the ExSC determines otherwise.

3. Appeals of appeals decisions issued by the ANSI BSR or the ANSI ExSC are made to the ANSI Appeals Board. The Appeals Board is the final level of appeal at ANSI. The Operating Procedures of the ANSI Appeals Board are available at http://web.ansi.org/public/library/ansi_proc/proc_ab.html <http://web.ansi.org/public/library/ansi_proc/proc_ab.html> . Please note that clause 1 states the following: "Pending resolution by the Appeals Board, the original action of the decision-making body shall stand unless the decision-making body determines otherwise."

4. ANSI Audited Designators are subject to clause 1.3.2 Approval without BSR Review of the ANSI Procedures. ANSI Audited Designators are also subject to more audits than an ANSI-accredited standards developer that is not an Audited Designator. Presently, the ANSI Audited Designators include: NFPA, UL, ASTM and NSF International. Appeals of standards approved by Audited Designators as American National Standards are referred to the ANSI ExSC.

Finally, a summary of the key aspects of the process associated with the approval of a document as an American National Standard follows:

Standards developer's procedures are accredited by

the ANSI ExSC (upon accreditation, a developer may be referred to as an ANSI-Accredited Standards Developer)

V

Preliminary Development Stage of Document (Filing of ANSI PINS form for new and revised ANS)

V

Draft of Document is Announced in Standards Action for ANSI Public Review (Filing of ANSI BSR-8 Form, substantive changes may require multiple public reviews)

V

Draft of Document is Balloted to Consensus Body (i.e. Committee, Canvass List, etc., multiple ballots may be necessary)

V

Attempt to Resolve and Respond to Comments Resulting from Public Review and Consensus Body Ballot

V

Recirculation of Outstanding Public Review Comments/Unresolved Comments from Consensus Body Members Back to the Full Consensus Body (in order to afford all Consensus Body Members the Opportunity to Respond, Reaffirm or Change Their Vote)

V

Notification of Right to Appeal at the Standards Developer Level Sent to Outstanding Objectors (Public Review & Consensus Body Members)/Developer Appeals Process Completed

V

Documentation of Consensus Submitted to ANSI (Filing of ANSI BSR-9 Form, which includes the Final Tally by Interest Category of the Consensus Body and Other Supporting Documentation that demonstrates evidence of consensus and due process)

V

Approval of Document by ANSI Board of Standards Review or by an ANSI Audited Designator

V

Right to appeal to the ANSI Board of Standards Review or the ANSI Executive Standards Council as appropriate

V

Right to appeal an ANSI BSR or ANSI ExSC decision to the ANSI Appeals Board

I trust that this information is helpful. Please contact me or Jim Thompson at jthompso@ansi.org <<mailto:jthompso@ansi.org>> if you or your staff have any questions or if we may be of further assistance to you.

Sincerely,
Anne

Anne Caldas
Director, Procedures and Standards

Administration/ANSI

acaldas@ansi.org <<mailto:acaldas@ansi.org>>
(212) 642-4914
Fax: (212) 730-1346
Please visit ANSI Online at www.ansi.org

<<http://www.ansi.org>> . The Reference Library contains procedures, forms and guides related to the American National Standards (ANS) process.

Standards Action, ANSI's key public review vehicle, is also issued and posted every other week and is available for free at <http://web.ansi.org/standardsaction/> <<http://web.ansi.org/standardsaction/>>. Please review it so that you are able to participate effectively in the ANS process.

CC: James Thompson <Jthompso@ANSI.org>